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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Written statement*/ submitted by North-South XXI, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

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*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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Jewish National Institutions and Discrimination

1. Under its review of its obligations under the Covenant on Economic, Social and Cultural Rights in 1998, the treaty body initiated the fist formal UN inquiry into the legal status of Jewish national institutions. The CESCR, the Government of Israel (GOI) provided a misleading response to the Committee's priority concerns with regard to discrimination and the "parastatal" institutions: the World Zionist Organization (WZO), Jewish Agency (JA) and Jewish National Fund (JNF). It asserted that the WZO, JA and JNF all are private institutions, creating the false impression that such institutions are not subject to international public law.

2. In fact, these institutions are part of the State of Israel as determined by Israeli legislation in its Basic Laws and other statutes. Officers of the WZO /JA and JNF also assume other parallel appointments within the state apparatus, and Israeli law guarantees WZO/JA and JNF exemptions and waivers on a range of fees and taxes on transactions conducted behalf of "Jewish nationals" that are imposed on all others (Lehn & Davis, 96-99).

3. Long before the establishment of Israel, the WZO and its sister institution, the JA, claimed status as a public body under international law. The First Zionist Congress of 1897 at Basle set out explicitly to achieve that public status. (Later in the response, the GOI describes the public-body role of the JA and JNF (e.g., 32-33), thus contradicting their own assertions.)

4. The principal juridical consequence of status as a public body, of course, is subjection to the law. There can be no grant of powers and status as a public body without the accompanying legal obligations that apply to all subjects of international law. Both the public status and accompanying legal limitations on the WZO /JA are manifest from the start of its activities in Palestine (e.g., in the various versions of the Balfour Declaration of 1917, subsequent recognition by the community of states, and the Mandate of Palestine Administration). Like the Balfour Declaration, the Mandate explicitly called for protection of the rights of "existing non-Jewish communities in Palestine" ("and the rights enjoyed by Jews in any other country [than Palestine]"). The WZO /JA had also made early declarations in conformity with that obligation (Mallison, 99-100, notes 59-63).

5. Similar rights and responsibilities are contained in the Palestine Partition resolution 181 (II) of 1947, cited in the GOI submission as the basis for the establishment of the State of Israel. Probable contradictions of the UN Charter aside, UNGA 181 (II) did recommend establishment of both Arab and Jewish States. However, what the GOI response omits to mention is that the same UN resolution sets forth a non-discrimination provision that citizens in both zones "upon recognition of independence become citizens of the state in which they are resident and enjoy full civil and political rights" (UN Partition Plan (c) Declaration Chapter [3] [1]).

6. The WZO /JA has been the principal public body promoting the concept of "Jewish nationality" and the status that this concept confers under the laws and policies of Israel. The close working relationship of the WZO /JA to the Palestine (Mandate) Administration emerged in the form of a shadow government in Palestine, leading up to the establishment of the State of Israel (Report of the Anglo- American Committee of Inquiry , in Mallison, 100). Claiming "the Jewish people" as its exclusive constituency, the WZO /JA, however, violated

its public body obligations commensurate with the increasing political and military power of the Jewish colony in Palestine. (The Anglo-American Report stated that "The Jewish shadow Government has ceased to cooperate with the [Palestine] Administration in the maintenance of law and order, and in the suppression of terrorism" [Ibid., at 39].) The WZO/JA also financed much of the war effort against the Arab States fifty years ago.

7. Since the State of Israel was established, the GOI, the Military Government of Israel (MGOI) and the WZO /JA continue to operate officially to the exclusive service of the claimed "Jewish people" constituency and no other. (The MGOI serves only "Jewish nationals" de facto, rather than de jure, since its acclaimed source of authority , the Defense Emergency Regulations (1945), does not discriminate.) The WZO/JA activities both in Israel and extraterritorially are considerable and parallel the GOI and MGOI. For instance, the WZO negotiated with Germany for reparations on behalf of the "Jewish people," transferring proceeds to Israel, whether or not the intended beneficiaries were Israelis. These facts are contrary to the State of Israel's response to the Committee that the WZO "serves mostly as a symbolic institution" (p. 11) .

8. The 1954 Covenant between the GOI and the Zionist Executive clarifies further the relationship of the WZO /JA and the GOI. The Covenant includes recognition of the JNF and United Israel Appeal as "institutions of the Zionist Organization," authorizes activities in Israel to be carried out "by means of public funds," and indicates in its first paragraph that the Zionist Executive "and its institutions" are to be treated as part of the GOI.

9. The parastatal WZO and JA have had overlapping functions over the decades. Moreover, a "Coordinating Body," formed in 1951, conjoins the executives of the WZO and JA to the GOI. However, what emerges through their continuing functions under the GOI and MGOI spheres amounts to an apparent division of labour. In their common roles of recruiting, organizing and carrying out physical projects for Jewish settlement, WZO operations focus on the 1967-occupied territories, and the JA concentrates inside the "green line" (1948-49 border of Israel). The two operations overlap, however, in certain settlement projects. One example is the "Seven Stars" chain of settlements, carried out during Gen. Ariel Sharon's tenure as Housing Minister. Promotion and planning were carried out jointly by the two symbiotic parastatals whereas those seven colonies straddle-and, effectively, erase-the "green line."

10. The WZO/JA also assume to themselves the task of representing "the Jewish people" extraterritorially; however, there is no method consistent with international law that makes the State of Israel, WZO /JA or JNF the representative of Jewish persons who are not also citizens of Israel. Nonetheless, d1e GOI combined reports to the Committee assert this extraterritorial claim (p. 9), and the response reiterates that in describing the role of the JA and JNF (e.g., pp. 32-33).

11. Together, the WZO/JA and the subsidiary JNF continue to constitute "parastatal" institutions identified with the State of Israel. The "Jewish people" concept that these institutions promoted in the pre-state phase has culminated in the exclusive "Jewish nationality" status under current Israeli law. The WZO/JA and subsidiaries maintain their formal link to the State under the Basic Law: World Zionist Organization -Jewish Agency for Israel (Status) Law (1952) and its Amendment (1975). These institutions are further bound by

their charters to serve only "Jewish people/Jewish nationals." Therefore, the GOI's response to the Committee's relevant queries is false.

12. Efforts to explain the discrimination experienced by the indigenous Arab citizens as a spontaneous phenomenon inconsistent with the "democratic character" of the State serve to divert attention from the institutionalized nature of the discrimination. The GOI response to the Committee addresses the effect of the exclusionist Jewish character of the State on non-Jews by referring to the Declaration of Establishment (p.9), which includes the contradictory assertion of the State's Jewish with the statement that all its citizens are to have equal "social and political rights." That Declaration has no legal force or effect in Israel. What does confer status and rights to citizens is a series of "Basic Laws" that function in place of a constitution or bill of rights.

13. In the words of Israel's first Prime Minister David Ben Gurion, the Status Law (1952) was to ensure continuity of the Zionist settlement program and thereby function beyond the GOI, which "is obliged to operate like any other state" (See 4 Jewish Agency Digest of Press and Events [18 Nov. 1949], at 1069-70]. The Status Law, however, regularizes the activity to "intervene in the internal life of Jewish communities abroad" and provides juridical authority and status from the State of Israel for the WZO /JA to perform those functions both within the state and extraterritorially.

14. To interpret an Israeli law, or any Zionist document, it is necessary to have knowledge of Zionist ideology .While the "Jewish people" concept is essential to Zionist public law relations with Jews outside of the State of Israel, the Israel Government Year-Book (1953-54) recognized the "great constitutional importance" of the Status Law (1952). Not only did Israel's first prime minister submit it for legislation as "one of the foremost basic laws," but also clarified that "this Law completes the Law of Return in determining Zionist character of the State of Israel" [emphasis added].

15. The "Jewish nationality" concept advanced by the public institution of the WZO /JA and subsidiaries is precisely the concept legislated into Israeli law as the key to institutionalized racism and discrimination. The cornerstone of the discriminatory legal structure is the Status Law (1952), supported by two other Basic Laws: the Law of Citizenship and Law of Return.

16. The Law of Return is effectively a nationality law in that it establishes one of the four bases for acquiring citizenship in Israel. However, only Jews are allowed to come to areas controlled by the GOI and MGOI to claim their " supra-citizenship " status of Jewish nationality while acquiring their citizenship " by return. " This notion of a "Jewish national" arrival "returning" from some other domicile country to Palestine is majestically ideological.

17. The Basic Law of Return is not to be confused with an immigration law, which would establish immigration procedures for non-nationals to acquire status in a country. The "great constitutional importance" of the WZO/JA Status Law is realized when linked as a Basic Law to its sister Basic Law of Return. Thus, "return" realizes a "nationality" right reserved exclusively for Jews.

18. The status known as "Israeli citizenship" is distinct from "nationality" under Israeli law, and is set forth in the Law of Citizenship [ezrahut]. Non-Jews, including indigenous Palestinians, can acquire this inferior citizenship status. However, "citizenship" status does not confer the right to benefit from "national" institutions. These are institutions that serve (Jewish) "nationals," and include the WZO /JA and its subsidiaries. One such subsidiary is the JNF, which owns one-third of the country's water (Falah in Masalha, 85). The Israel Lands Administration claims to own 90 percent of the land. (Halabi in Masalha, 21). Such national institutions acquire land and property , including by various methods of dispossessing Palestinians by force, and transfer the acquired wealth to the benefit of an exclusive group of citizens and potential citizens enjoying "Jewish nationality."

19. Under Israeli Law, anyone who is considered eligible for Jewish nationality can obtain this first-class status and full rights on the basis of religion and by arriving in the country. By contrast, a citizen of the State of Israel who does not hold this exclusive "nationality" status can never hold this first-class status of full rights and benefits, even if s/he is born there. This legal fact became most clear in the case of George Tamarin v. the State of Israel (1970), wherein a Jewish Israeli had petitioned to have the official registration of his nationality changed from "Jewish" to "Israeli." The High Court denied his request as "there is no Israeli nation separate from the Jewish nation...composed not only of those residing in Israel but also of Diaspora Jewry." Therefore, nationality status in Israel is not linked to residence in a territory, as is the norm in international law. Instead, the basic theocratic character of the Israeli legal system establishes ethnic criteria as the grounds for enjoyment of economic, social and cultural rights.

20. Among the self-contradicting contents of the GOI's response to the Committee is the statement that "the State affords special protection to the national identity of minority groups living within it" (p. 10). Against Israel's legal and constitutional rubric, recognizing national identity of minorities also serves to distinguish and alienate them from full enjoyment of their rights.